




SOUTHWEST MARINE, INC.

MEMORANDUM

TO: Bruce Gair
Bob Kilpatrick
Bob McKay
Lloyd Schwartz
Paul Witherspoon

FROM: Herb Engel 

SUBJ: Hazardous Waste Disposal

DATE: August 18, 1989

Attached is a letter by Performance Contracting to the Board of Equalization presenting their case as to why they should not pay any Superfund tax for Hazardous Waste disposal.

In addition, there is a billing statement from the State Board of Equalization which agrees with Performance Contracting's position. This information may be useful in the future.

HGE/kj
Attachment

PERFORMANCE ABATEMENT SERVICES, INC.

February 8, 1989

Board of Equalization
Excise Tax Unit
P.O. Box 647
Sacramento, California
95803-0647

RECEIVED
FEB 10 1989
PERFORMANCE CONTRACTING INC.
S. O. OFFICE

Dear Sirs:

Please find enclosed the Hazardous Waste Disposal Report - Annual 'Superfund' Tax form. Performance Abatement Services, Inc. is an asbestos removal contractor doing business in your state as well as others nationally. Normally, under most federal and state regulations, the facility owner not the removal contractor is considered the "generator". In our dealings with the Navy in San Diego, however, the Navy insists on the removal contractor assuming the responsibility of becoming the "generator". We have accepted this provision in the contract under protest. Under no circumstances do we consider ourselves as the "generator". We only perform a service of safely removing the hazardous material without adversely altering its properties to an approved disposal site.

Performance Abatement Services, Inc., therefor requests that the tax be assessed to the true generator of the hazardous waste (the Navy) and that no tax liability be placed on Performance Abatement Services, Inc.

Please contact me if you have any question concerning this situation.

Sincerely,

Robert M. Bornkessel

Robert M. Bornkessel
Industrial Hygienist/Compliance Engineer

cc: ~~Paul Fulcom, PCI San Diego~~
David Rhind, PAS Kansas City
Paul Miller, PCG

P.O. BOX 19328, LENEXA, KANSAS 66215 • 913/888-2423



STATE BOARD OF EQUALIZATION
DEPARTMENT OF BUSINESS TAXES

P.O. BOX 942879 SACRAMENTO, CALIFORNIA 94279-0001

EXCISE TAX (GENERATOR FEE)

(916) 739-2582

IN REPLY REFER TO:

RE	PM
EFFECTIVE DATE OF PAYMENT	
MO.	DAY YEAR

PERFORMANCE ABATEMENT SERVICES
2015 MAIN ST
SAN DIEGO CA 92113

DATE: MAY 30, 1989

ACCOUNT NUMBER

HG HQ 36-02531

NOTICE OF REDETERMINATION

YOU ARE HEREBY NOTIFIED THAT THE ACTION INDICATED BELOW WAS TAKEN ON YOUR PETITION FOR REDETERMINATION OF HAZARDOUS SUBSTANCE TAX LAW

	AMOUNT			
	FEE	INTEREST	PENALTY	TOTAL
AS DETERMINED				
07/01/87-06/30/88	1078.00			1078.00
ADJUSTMENT 05/30/89	-1078.00			-1078.00
AS REDETERMINED	N 0 N E			
PAYMENT 05/16/88	-483.00			-483.00
L-0000				
TOTAL:	-483.00			-483.00
***AMOUNT OF CREDIT				-483.00

THE INDICATED ADJUSTMENT WAS ORDERED.

REFUND OF THE ABOVE CREDIT BALANCE IS IN PROCESS.

AMOUNT PAID WAS IN EXCESS OF THAT REDETERMINED.

2015 MAIN ST - CAD981379217

RECEIVED
JUN - 1 1989
PERFORMANCE CONTRACTING INC.
S N OFFICE



**Shipbuilders
Council of
America**

1110 Vermont Avenue, N.W.
Washington, D.C. 20005-3553
202-775-9060

HAZWASTE/NAVY

*We voted for
this change*

October 5, 1989

*Herbert Howell
have been asked
to support it
10/20/89*

To: BOARD OF DIRECTORS

Subject: Hazardous Waste Amendment

For your information and action, attached is a copy of a proposed amendment supported by the Council on the subject of hazardous wastes. The amendment would -

1. Strike the House-passed language requiring the government to indemnify a private ship repair yard for the removal, handling, storage, transportation, or disposal of hazardous waste generated by the Navy during a vessel maintenance or overhaul.
2. Substitute new language -
 - a. Requiring the Navy to obtain a EPA issued generator number for hazardous wastes; and
 - b. Defining hazardous wastes generated by the Navy to mean the vessel, all components thereof, all materials thereon, and all materials and equipment furnished by the Navy for performance of the contract which are or become hazardous wastes.

The reason for the change in strategy is twofold. First, the concept of indemnification is too new and bold and as such we are having a hard time selling members of Congress on it. Second, by using established environmental legal concepts as "generator," "hazardous waste," and "identification number," we can argue that all we want is for the Navy to follow the law.

The End Result is the Same: Our Interests are Protected. Since the House/Senate Conference on this item is meeting right now, please contact your members on the House and Senate Armed Services Committees to make your views known.

John
John J. Stocker
President

Attachment

*Bill H
Bill J
Dave E
COPY BRUCE G
DAVID AUSTIN
Bob K*

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12 *PART B—NAVAL VESSELS AND SHIPYARDS*

13 *SEC. 1211. HANDLING OF HAZARDOUS WASTES IN NAVAL SHIP*

14 *REPAIR WORK.*

15 *(a) REVISION OF REQUIRED CONTRACT PROVI-*

16 *SIONS.—Section 7311 of title 10, United States Code, is*

17 *amended to read as follows:*

18 *"§ 7311. Repair or maintenance of naval vessels: handling of*

19 *hazardous waste*

20 *"(a) CONTRACTUAL PROVISIONS.—The Secretary of*

21 *the Navy shall ensure that each contract entered into for*

22 *work on a naval vessel (other than new construction) includes*

23 *the following provisions:*

24 *"(1) IDENTIFICATION OF HAZARDOUS*

25 *WASTES.—Provisions in which the Navy identifies the*

1 ~~"(A) arises out of, or results from, the removal by~~
 2 ~~the contractor of hazardous wastes generated by the~~
 3 ~~Navy from the naval vessel on which the work is being~~
 4 ~~performed for the handling, storage, transportation, or~~
 5 ~~disposal by the contractor of such wastes); and~~

6 ~~.."(B) is not otherwise compensated for by insur-~~
 7 ~~ance or otherwise.~~

8 ~~"(3) For purposes of contract indemnification provi-~~
 9 ~~sions, a covered claim, loss, or damage is—~~

10 ~~"(A) a claim (including reasonable expenses of~~
 11 ~~litigation and settlement) by a third person (including~~
 12 ~~the United States and its agencies, the several States~~
 13 ~~and their agencies, and employees of the contractor)~~
 14 ~~for—~~

15 ~~.."(i) death or personal injury;~~

16 ~~.."(ii) loss of, damage to, or loss of use of~~
 17 ~~property; or~~

18 ~~.."(iii) loss of, damage to, or loss of use of~~
 19 ~~natural resources; or~~

20 ~~"(B) loss of, or damage to, property of the con-~~
 21 ~~tractor and loss of use of such property (other than loss~~
 22 ~~of profit).~~

23 ~~"(3) Such contract indemnification provisions shall also~~
 24 ~~provide that in the case of any covered claim, loss, or damage,~~
 25 ~~the United States will defend the contractor against the~~

1 ~~against claims, loss, or damage in the same manner,~~
 2 ~~and subject to the same limitations, as apply to the~~
 3 ~~contractor under paragraph (1);~~

4 ~~"(B) that the contracting officer for the contract~~
 5 ~~may also approve indemnification of subcontractors at~~
 6 ~~any lower tier, under the same terms and conditions;~~
 7 ~~and.~~

8 ~~"(C) that the United States shall indemnify the~~
 9 ~~contractor against liability to subcontractors incurred~~
 10 ~~under subcontract provisions approved under this para-~~
 11 ~~graph by the contracting officer.~~

12 ~~"(7) The contract indemnification provisions shall also~~
 13 ~~provide that, in the case of any payment to be made by the~~
 14 ~~United States under those provisions, the United States may~~
 15 ~~make the payment to the contractor or subcontractor being~~
 16 ~~indemnified or may make the payment directly to the party to~~
 17 ~~whom the contractor or subcontractors may be liable.~~

18 ^(b)
 18 ~~"(c)~~ **RENEGOTIATION OF CONTRACT.**—The Secretary
 19 of the Navy shall renegotiate a contract described in subsec-
 20 tion (a) if—

21 "(1) the contractor, during the performance of
 22 work under the contract, discovers hazardous wastes
 23 different in type or amount from those identified in the
 24 contract; and

c) Definitions - (1) For purposes of this section, all terms contained herein, such as "generator," "hazardous waste," and "identification number," shall have the meanings as defined by the Resource Conservation and Recovery Act or by any other applicable federal or state law.

(2) Hazardous wastes generated by the Navy means the vessel, all components thereof, all materials thereon, and all materials and equipment furnished by the Navy for performance of the contract which are or become hazardous waste, as defined by the Resource Conservation and Recovery Act or by any other applicable federal or state law."



**Shipbuilders
Council of
America**

1110 Vermont Avenue, N.W.
Washington, D.C. 20005-3553
202-775-9060

cc: ART
HERB
CARL
DAVID
BILLY
DANA
BRAD

November 8, 1989

MIKE MCK
LARRY BOB
WAYNE
TERRY KINGRAY
✓NAVY HAZMAT FILE

To: ENVIRONMENTAL CONTROL COMMITTEE

Subject: Hazardous Waste

For your information, attached is a copy of the Congressional rewrite of section 7311 of title 10, United States Code, relating to the handling of hazardous waste during the repair or maintenance of a naval vessel, as well as the accompanying report language describing the law.

Pat Morris

W. Patrick Morris
Vice President &
General Counsel

Attachment

SEC. 1611. IDENTIFICATION AND HANDLING OF HAZARDOUS WASTES IN NAVAL SHIP REPAIR WORK

(b) REVISION OF REQUIRED CONTRACT PROVISIONS.—Section 7311 of title 10, United States Code, is amended to read as follows: "7311. Repair or maintenance of naval vessels: handling of hazardous waste

"(a) CONTRACTUAL PROVISIONS.—The Secretary of the Navy shall ensure that each contract entered into for work on a naval vessel (other than new construction) includes the following provisions:

"(1) IDENTIFICATION OF HAZARDOUS WASTES.—A provision in which the Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste.

"(2) COMPENSATION.—A provision specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

"(3) STATEMENT OF WORK.—A provision specifying the responsibilities of the Navy and of the contractor, respectively, for the removal (including the handling, storage, transportation, and disposal) of hazardous wastes.

"(4) ACCOUNTABILITY FOR HAZARDOUS WASTES.—(A) A provision specifying the following:

"(i) In any case in which the Navy is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the Navy pursuant to applicable law.

"(ii) In any case in which the contractor is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the contractor pursuant to applicable law.

"(iii) In any case in which both the Navy and the contractor are generators of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear both a generator identification number issued to the Navy and a generator identification number issued to the contractor pursuant to applicable law.

"(B) A determination under this paragraph of whether the Navy is a generator, a contractor is a generator, or both the Navy and a contractor are generators, shall be made in the same manner provided under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) and regulations promulgated under that subtitle.

"(b) RENEGOTIATION OF CONTRACT.—The Secretary of the Navy shall renegotiate a contract described in subsection (a) if—

"(1) the contractor, during the performance of work under the contract, discovers hazardous wastes different in type or amount from those identified in the contract; and

"(2) those hazardous wastes originated on, or resulted from material furnished by the Government for, the naval vessel on which the work is being performed.

"(c) REMOVAL OF WASTES.—The Secretary of the Navy shall remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for performance of a contract, to the extent such removal is feasible.

"(d) RELATIONSHIP TO SOLID WASTE DISPOSAL ACT.—Nothing in this section shall be construed as altering or otherwise affecting those provisions of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) that relate to generators of hazardous waste. For purposes of this section, any term used in this section for which a definition is provided by the Solid Waste Disposal Act (or regulations promulgated pursuant to such Act) has the meaning provided by that Act or regulations."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any contract for work on a naval vessel (other than new construction) entered into after the end of the 90-day period beginning on the date of the enactment of this Act.

Handling of hazardous wastes in naval ship repair work (sec. 1611)

The House bill contained a provision (sec. 1211) that would amend section 7311, title 10, United States Code, relating to provisions required in ship repair contracts to: (1) provide that the requirements of that section apply to all contracts for work on a naval vessel other than new construction; (2) clarify the manner in which the Navy must identify hazardous waste expected to be handled by the contractor during such work; (3) provide that the contractor be indemnified by the United States for all claims, losses, or damages arising out of the contractor's removal, handling, storage, transportation or disposal of hazardous wastes guaranteed by the Navy from the vessel on which such work is being performed; and (4) clarify the circumstances under which the Secretary of the Navy must renegotiate such contracts when previously unidentified hazardous wastes are discovered during the course of work in the vessel.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The conference agreement would adopt

those portions of the House provision that would expand the applicability of section 7211, title 10, United States Code, to all contracts for work on a naval vessel (except new construction); clarify the manner in which hazardous wastes are to be identified in such contracts; and clarify the circumstances under which contract renegotiation would be required.

However, the conferees did not adopt the portion of the House provision relating to indemnification. Rather, the conferees have included a provision that would require that all covered contracts provide that all manifests, invoices, or other documents related to the removal, handling, storage, transportation or disposal of hazardous waste, as defined by applicable law, arising out of the performance of such a contract bear the generator identification number of the party or parties to the contract who gener-

ate the hazardous waste, as determined under the Solid Waste Disposal Act and regulations promulgated pursuant to that Act. Specifically, all such documents will bear a generator identification number issued by the contractor with respect to all such hazardous waste generated solely by the contractor. All such documents related to such hazardous waste that are generated by both the Navy and the contractor, as determined under applicable law, shall bear both a generator identification number issued to the Navy and a generator number issued to the contractor.

The conference agreement would also require the Secretary of the Navy to remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for the performance of a contract covered by this section, to the extent such removal is feasible.

This conference agreement is designed to ensure that there be no question that hazardous wastes that arise during the performance of a ship repair contract and that are otherwise subject to applicable law are to be identified on all appropriate documents and dealt with as would any other hazardous wastes subject to applicable law, except that documents relating to hazardous wastes generated by other parties to the contract shall reflect that both parties were involved in the generation of that waste. This will ensure that such co-generated waste will continue to be identified throughout the waste stream as having arisen from work performed under a contract between the Navy and the particular contractor involved, so that the identities of both generators of that waste are known if and when questions of liability for the generation of that waste arise sometime in the future.

The conferees emphasize that the conference agreement does not alter any federal liability for the handling of hazardous waste as established by the Solid Waste Disposal Act, and other applicable Federal laws and regulations. Finally, the conferees agree that this approach to handling hazardous wastes arising from ship repair work is taken only because of the unique circumstances of such work, such as the quantity and diverse nature of hazardous wastes arising from such work, and because of the complexity of the determination under law and implementing regulations of how and when hazardous waste is generated on board a U.S. naval vessel. For these reasons, the conferees do not view this conference agreement as providing a precedent for similar handling of issues involving hazardous wastes arising from other situations.



SOUTHWEST MARINE, INC.

"Specialists in the Repair,
Modernization and Maintenance
of Seagoing Vessels"

1300 Crystal Drive, Suite 1709S
Arlington, Virginia 22202 / (703) 979-2270 / Telex: 901857 HQ AGTN

MEMORANDUM

TO: Art Engel
Herb Engel

FROM: Bob Bates *B*

DATE: November 30, 1989
Serial: 8911-399

SUBJECT: 1989 Authorization and Appropriations Bills

Defense Authorization Bill signed by President Bush on November 29, 1989, (Public Law) P.L.101-189. The Defense Appropriations Bill was signed on November 21, 1989, P.L.101-165.

Art and Herb:

The Defense Authorization Bill was signed into law on November 29, 1989 and is P.L.101-189. This Bill and its report language invokes:

1. The new Hazardous Waste language which becomes effective on all solicitations issued ninety (90) days after the above date. Section 1611 of the law is Hazardous Waste and requires Navy Generator Numbers where appropriate. (See Attachment 1). The report language also enclosed describes the two positions of the House and Senate and clarifies the language of the bill somewhat. (See Attachment 2).
2. The Progress Payment increase of five (5) percent is invoked in the law effective immediately. With the law changed as it currently is technically there are no restrictions on dates of contracts applicability. I think we can invoice an additional five (5) percent on all of our ongoing work and perhaps more because the accompanying report language explains that this is a floor number. Section 1612 (See Attachment 3) and report language with an effective date of November 29, 1989.
3. Law Section 1614 of P.L.101-189 requires one-half of the FY'90 dollars scheduled for ship repair work in Japan be returned to the U.S. for completion. Several major repairs have already

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PART B—NAVAL VESSELS AND SHIPYARDS

SEC. 101. IDENTIFICATION AND HANDLING OF HAZARDOUS WASTES IN NAVAL SHIP REPAIR WORK

(a) REVISION OF REQUIRED CONTRACT PROVISIONS.—Section 7311 of title 10, United States Code, is amended to read as follows:

"§ 7311. Repair or maintenance of naval vessels; handling of hazardous waste

"(a) CONTRACTUAL PROVISIONS.—The Secretary of the Navy shall ensure that each contract entered into for work on a naval vessel (other than new construction) includes the following provisions:

"(1) IDENTIFICATION OF HAZARDOUS WASTES.—A provision in which the Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste.

"(2) COMPENSATION.—A provision specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

"(3) STATEMENT OF WORK.—A provision specifying the responsibilities of the Navy and of the contractor, respectively, for the removal (including the handling, storage, transportation, and disposal) of hazardous wastes.

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"(ii) In any case in which the contractor is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the contractor pursuant to applicable law.

"(iii) In any case in which both the Navy and the contractor are generators of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, stor-

November 6, 1989

COR

age, transportation, or disposal of such hazardous waste shall bear both a generator identification number issued to the Navy and a generator identification number issued to the contractor pursuant to applicable law.

"(B) A determination under this paragraph of whether the Navy is a generator, a contractor is a generator, or both the Navy and a contractor are generators, shall be made in the same manner provided under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) and regulations promulgated under that subtitle.

"(b) RENEGOTIATION OF CONTRACT.—The Secretary of the Navy shall renegotiate a contract described in subsection (a) if—

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"(2) those hazardous wastes originated on, or resulted from material furnished by the Government for, the naval vessel on which the work is being performed.

"(c) REMOVAL OF WASTES.—The Secretary of the Navy shall remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for performance of a contract, to the extent such removal is feasible.

"(d) RELATIONSHIP TO SOLID WASTE DISPOSAL ACT.—Nothing in this section shall be construed as altering or otherwise affecting those provisions of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that relate to generators of hazardous waste. For purposes of this section, any term used in this section for which a definition is provided by the Solid Waste Disposal Act (or regulations promulgated pursuant to such Act) has the meaning provided by that Act or regulations."

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any contract for work on a naval vessel (other than new construction) entered into after the end of the 90-day period beginning on the date of the enactment of this Act.

Bill Language

Attachment 1

Handling of hazardous wastes in naval ship repair work (sec. 1611)

The House bill contained a provision (sec. 1211) that would amend section 7211, title 10, United States Code, relating to provisions required in ship repair contracts to: (1) provide that the requirements of that section apply to all contracts for work on a naval vessel other than new construction; (2) clarify the manner in which the Navy must identify hazardous waste expected to be handled by the contractor during such work; (3) provide that the contractor be indemnified by the United States for all claims, losses, or damages arising out of the contractor's removal, handling, storage, transportation or disposal of hazardous wastes guaranteed by the Navy from the vessel on which such work is being performed; and (4) clarify the circumstances under which the Secretary of the Navy must renegotiate such contracts when previously unidentified hazardous wastes are discovered during the course of work in the vessel.

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The Senate recedes with an amendment. The conference agreement would adopt

Report Language

those portions of the House provision that would expand the applicability of section 7211, title 10, United States Code, to all contracts for work on a naval vessel (except new construction); clarify the manner in which hazardous wastes are to be identified in such contracts; and clarify the circumstances under which contract renegotiation would be required.

However, the conferees did not adopt the portion of the House provision relating to indemnification. Rather, the conferees have included a provision that would require that all covered contracts provide that all manifests, invoices, or other documents related to the removal, handling, storage, transportation or disposal of hazardous waste, as defined by applicable law, arising out of the performance of such a contract bear the generator identification number of the party or parties to the contract who generate the hazardous waste, as determined under the Solid Waste Disposal Act and regulations promulgated pursuant to that Act. Specifically, all such documents will bear a generator identification number issued by the contractor with respect to all such hazardous waste generated solely by the contractor. All such documents related to such hazardous waste that are generated by both the Navy and the contractor, as determined under applicable law, shall bear both a generator identification number issued to the Navy and a generator number issued to the contractor.

The conference agreement would also require the Secretary of the Navy to remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for the performance of a contract covered by this section, to the extent such removal is feasible.

This conference agreement is designed to ensure that there be no question that hazardous wastes that arise during the performance of a ship repair contract and that are otherwise subject to applicable law are to be identified on all appropriate documents and dealt with as would any other hazardous wastes subject to applicable law, except that documents relating to hazardous wastes generated by other parties to the contract shall reflect that both parties were involved in the generation of that waste. This will ensure that such co-generated waste will continue to be identified throughout the waste stream as having arisen from work performed under a contract between the Navy and the particular contractor involved, so that the identities of both generators of that waste are known if and when questions of liability for the generation of that waste arise sometime in the future.

The conferees emphasize that the conference agreement does not alter any federal liability for the handling of hazardous waste as established by the Solid Waste Disposal Act, and other applicable Federal laws and regulations. Finally, the conferees agree that this approach to handling hazardous wastes arising from ship repair work is taken only because of the unique circumstances of such work, such as the quantity and diverse nature of hazardous wastes arising from such work, and because of the complexity of the determination under law and implementing regulations of how and when hazardous waste is generated on board a U.S. naval vessel. For these reasons, the conferees do not view this conference agreement as providing a precedent for similar handling of issues involving hazardous wastes arising from other situations.

Attachment 2



SOUTHWEST MARINE, INC.
SAN DIEGO DIVISION

"Specialists in the Repair,
Modernization and Maintenance
of Seagoing Vessels"

Foot of Sampson St., P.O. Box 13308, San Diego, CA 92113-0308
(619) 238-1000 / Telex 910-335-1167 (SWM SDG)
Corporate Offices San Diego

SAN DIEGO FAX (619) 238-0934

FAX MESSAGE

SEND TO
TELEPHONE (213) 833-2222

DATE 1-15-90

PLEASE DELIVER TO
NAME Nike McKeown

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LOCATION SWM/SAN PEDRO

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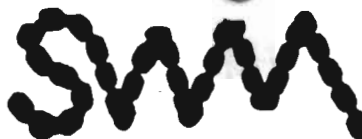
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NAME OF SENDER Bruce Gair

SPECIAL INSTRUCTIONS IF ANY _____

This is effective the 1ST of March, 1990.

Form 756



SOUTHWEST MARINE, INC.
SAN DIEGO DIVISION

"Specialists in the Repair,
Modernization and Maintenance
of Seagoing Vessels"

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Corporate Offices San Diego

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(503) 240-6600

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NAME OF SENDER

Bruce Cair.

SPECIAL INSTRUCTIONS IF ANY

this is effective the 1st of March, 1990.

Form 756



SOUTHWEST MARINE, INC.
SAN DIEGO DIVISION

*"Specialists in the Repair,
Modernization and Maintenance
of Seagoing Vessels"*

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(415) 558-8466

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NAME OF SENDER

Bruce Gair

SPECIAL INSTRUCTIONS IF ANY

This is effective the 1ST of March, 1990.

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M E M O R A N D U M

TO: Art Engel
Herb Engel

FROM: Bob Bates *B*

DATE: November 30, 1989
Serial: 8911-399

SUBJECT: 1989 Authorization and Appropriations Bills

Defense Authorization Bill signed by President Bush on November 29, 1989, (Public Law) P.L.101-189. The Defense Appropriations Bill was signed on November 21, 1989, P.L.101-165.

Art and Herb:

The Defense Authorization Bill was signed into law on November 29, 1989 and is P.L.101-189. This Bill and its report language invokes:

1. The new Hazardous Waste language which becomes effective on all solicitations issued ninety (90) days after the above date. Section 1611 of the law is Hazardous Waste and requires Navy Generator Numbers where appropriate. (See Attachment 1). The report language also enclosed describes the two positions of the House and Senate and clarifies the language of the bill somewhat. (See Attachment 2).
2. The Progress Payment increase of five (5) percent is invoked in the law effective immediately. With the law changed as it currently is technically there are no restrictions on dates of contracts applicability. I think we can invoice an additional five (5) percent on all of our ongoing work and perhaps more because the accompanying report language explains that this is a floor number. Section 1612 (See Attachment 3) and report language with an effective date of November 29, 1989.
3. Law Section 1614 of P.L.101-189 requires one-half of the FY'90 dollars scheduled for ship repair work in Japan be returned to the U.S. for completion. Several major repairs have already

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PART B—NAVAL VESSELS AND SHIPYARDS
SEC. 1611. IDENTIFICATION AND HANDLING OF HAZARDOUS WASTES IN NAVAL SHIP REPAIR WORK

(a) **REVISION OF REQUIRED CONTRACT PROVISIONS.**—Section 7311 of title 10, United States Code, is amended to read as follows:

"§ 7311. Repair or maintenance of naval vessels: handling of hazardous waste

"(a) **CONTRACTUAL PROVISIONS.**—The Secretary of the Navy shall ensure that each contract entered into for work on a naval vessel (other than new construction) includes the following provisions:

"(1) **IDENTIFICATION OF HAZARDOUS WASTES.**—A provision in which the Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste.

"(2) **COMPENSATION.**—A provision specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

"(3) **STATEMENT OF WORK.**—A provision specifying the responsibilities of the Navy and of the contractor, respectively, for the removal (including the handling, storage, transportation, and disposal) of hazardous wastes.

"(4) **ACCOUNTABILITY FOR HAZARDOUS WASTES.**—(A) A provision specifying the following:

"(i) In any case in which the Navy is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the Navy pursuant to applicable law.

"(ii) In any case in which the contractor is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the contractor pursuant to applicable law.

"(iii) In any case in which both the Navy and the contractor are generators of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, stor-

November 6, 1989

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age, transportation, or disposal of such hazardous waste shall bear both a generator identification number issued to the Navy and a generator identification number issued to the contractor pursuant to applicable law.

"(B) A determination under this paragraph of whether the Navy is a generator, a contractor is a generator, or both the Navy and a contractor are generators, shall be made in the same manner provided under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) and regulations promulgated under that subtitle.

"(b) **RENEGOTIATION OF CONTRACT.**—The Secretary of the Navy shall renegotiate a contract described in subsection (a) if—

"(1) the contractor, during the performance of work under the contract, discovers hazardous wastes different in type or amount from those identified in the contract; and

"(2) those hazardous wastes originated on, or resulted from material furnished by the Government for, the naval vessel on which the work is being performed.

"(c) **REMOVAL OF WASTES.**—The Secretary of the Navy shall remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for performance of a contract, to the extent such removal is feasible.

"(d) **RELATIONSHIP TO SOLID WASTE DISPOSAL ACT.**—Nothing in this section shall be construed as altering or otherwise affecting those provisions of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that relate to generators of hazardous waste. For purposes of this section, any term used in this section for which a definition is provided by the Solid Waste Disposal Act (or regulations promulgated pursuant to such Act) has the meaning provided by that Act or regulations.

"(e) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to any contract for work on a naval vessel (other than new construction) entered into after the end of the 90-day period beginning on the date of the enactment of this Act.

Bill Language

Attachment 1

Handling of hazardous wastes in naval ship repair work (sec. 1611)

The House bill contained a provision (sec. 1211) that would amend section 7211, title 10, United States Code, relating to provisions required in ship repair contracts to: (1) provide that the requirements of that section apply to all contracts for work on a naval vessel other than new construction; (2) clarify the manner in which the Navy must identify hazardous waste expected to be handled by the contractor during such work; (3) provide that the contractor be indemnified by the United States for all claims, losses, or damages arising out of the contractor's removal, handling, storage, transportation or disposal of hazardous wastes guaranteed by the Navy from the vessel on which such work is being performed; and (4) clarify the circumstances under which the Secretary of the Navy must renegotiate such contracts when previously unidentified hazardous wastes are discovered during the course of work in the vessel.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment. The conference agreement would adopt

those portions of the House provision that would expand the applicability of section 7211, title 10, United States Code, to all contracts for work on a naval vessel (except new construction); clarify the manner in which hazardous wastes are to be identified in such contracts; and clarify the circumstances under which contract renegotiation would be required.

However, the conferees did not adopt the portion of the House provision relating to indemnification. Rather, the conferees have included a provision that would require that all covered contracts provide that all manifests, invoices, or other documents related to the removal, handling, storage, transportation or disposal of hazardous waste, as defined by applicable law, arising out of the performance of such a contract bear the generator identification number of the party or parties to the contract who generate the hazardous waste, as determined under the Solid Waste Disposal Act and regulations promulgated pursuant to that Act. Specifically, all such documents will bear a generator identification number issued by the contractor with respect to all such hazardous waste generated solely by the contractor. All such documents related to such hazardous waste that are generated by both the Navy and the contractor, as determined under applicable law, shall bear both a generator identification number issued to the Navy and a generator number issued to the contractor.

The conference agreement would also require the Secretary of the Navy to remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for the performance of a contract covered by this section, to the extent such removal is feasible.

This conference agreement is designed to ensure that there be no question that hazardous wastes that arise during the performance of a ship repair contract and that are otherwise subject to applicable law are to be identified on all appropriate documents and dealt with as would any other hazardous wastes subject to applicable law. expect that documents relating to hazardous wastes generated by other parties to the contract shall reflect that both parties were involved in the generation of that waste. This will ensure that such co-generated waste will continue to be identified throughout the waste stream as having arisen from work performed under a contract between the Navy and the particular contractor involved, so that the identities of both generators of that waste are known if and when questions of liability for the generation of that waste arise sometime in the future.

The conferees emphasize that the conference agreement does not alter any federal liability for the handling of hazardous waste as established by the Solid Waste Disposal Act, and other applicable Federal laws and regulations. Finally, the conferees agree that this approach to handling hazardous wastes arising from ship repair work is taken only because of the unique circumstances of such work, such as the quantity and diverse nature of hazardous wastes arising from such work, and because of the complexity of the determination under law and implementing regulations of how and when hazardous waste is generated on board a U.S. naval vessel. For these reasons, the conferees do not view this conference agreement as providing a precedent for similar handling of issues involving hazardous wastes arising from other situations.

Report Language

Attachment 2



**Shipbuilders
Council of
America**

1110 Vermont Avenue, N.W.
Washington, D.C. 20005-3553
202-775-9060

HAZMAT

NAVY

August 25, 1989

Dear Admiral Hines:

On behalf of the members of the Shipbuilders Council, I want to thank you and your staff for the time spent on July 5 and August 20, 1989 attempting to resolve the nettlesome problem of the management of hazardous wastes in the repair and overhaul of naval vessels. It appears to me, regrettably, that the two sides have reached an impasse on the issue of whose EPA generator identification number is to be inserted on the manifest for Navy generated hazardous wastes and co-generated wastes. For the record, I would like to reiterate the Council's position on this issue.

The Council's view is that:

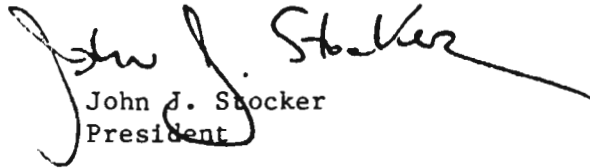
1. The contractor is obligated to have and use its EPA generator identification number and perform all generator duties for Resource Conservation and Recovery Act (RCRA) listed hazardous wastes generated solely by contractor personnel during the course of the ship repair work.
2. The Navy is obligated to have and use its EPA generator identification number and perform all generator duties for RCRA listed hazardous wastes generated solely by Navy personnel either prior to or during the course of the ship repair work.
3. The contractor and the Navy are obligated to have and use their EPA generator identification numbers for RCRA listed hazardous wastes generated by both contractor and Navy personnel during the course of the ship repair work.

As to so-called co-generated wastes, we are aware of the EPA policy that permits either party to assume all generator responsibilities. However, the members of the Council believe both parties' identification numbers should be on the appropriate manifest (tracking) form.

I cannot stress strongly enough the importance that the members of the Council place on the proper removal, handling, transportation and disposal of hazardous wastes. They are deeply concerned with the severity of the applicable environmental laws and the fact that liability is without regard to fault or negligence, with no limitation in time or financial amount, and is joint and several under the Superfund Act.

Again, thank you for your efforts in seeking a mutually acceptable solution to this long-standing problem.

Sincerely,



John J. Stocker
President

Admiral D. H. Hines, USN
Deputy Commander for
Industrial & Facility Management
Naval Sea Systems Command
Crystal Plaza 5, Room 1174
2211 Jefferson Davis Highway
Arlington, VA 20362